

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS  
ON REFERRAL BY THE COMMISSIONER OF REVENUE**

In the Matter of: )

D N. F )

OAH No. 12-0435-CSS

CSSD No. 001141944

**DECISION AND ORDER**

**I. Introduction**

The custodian, U C. K, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in Mr. F's case on August 27, 2012. The obligee child is T, born in 2006.

The hearing was held on October 8, 2012 and December 3, 2012. Neither party appeared at the first hearing session, but both appeared by telephone at the second hearing. Andrew Rawls and Erinn Brian, Child Support Specialists, represented CSSD. The hearing was recorded.

Based on the evidence and after careful consideration, Mr. F's child support is modified to \$629 per month, effective July 1, 2012, and ongoing.

**II. Facts**

*A. Procedural Background*

Mr. F's child support obligation for T was set at \$161 per month in May 2006.<sup>1</sup> On June 20, 2012, Ms. K initiated a modification review.<sup>2</sup> On June 20, 2012, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> Mr. F did not provide financial information.<sup>4</sup> On August 27, 2012, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. F's ongoing child support at \$399 per month, effective July 1, 2012.<sup>5</sup> Ms. K appealed on September 10, 2012, asserting that Mr. F's income has increased and she cannot survive on the modified child support amount calculated.<sup>6</sup>

*B. Material Facts*

Mr. F and Ms. K are the parents of T, who was born in 2006. T lives with Ms. K.

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<sup>1</sup> Exh. 1.

<sup>2</sup> Exh. 2.

<sup>3</sup> Exh. 3.

<sup>4</sup> CSSD's Pre-Hearing Brief at pg. 1.

<sup>5</sup> Exh. 4.

<sup>6</sup> Exh. 5.

Mr. F is a commercial fisherman working in Alaska. He spends nine months out of the year on the No Name, where he has been employed since the end of 2010. When he is not fishing, Mr. F goes to Michigan, where he is from, and where Ms. K still lives. At the time of the hearing, they were sharing a house as roommates.

Mr. F was not able to provide his 2012 earnings information because he did not have his year-end financials from the No Name's accountant. However, he testified that his annual income is about \$100,000 before expenses and in support of that statement, provided his 2011 federal income tax return in place of 2012 information. His Schedule C, "Profit or Loss From Business", indicates that in 2011 he had gross income of \$106,791, and after paying his expenses, had net profit of \$39,691.<sup>7</sup> CSSD used this net profit figure to calculate his child support at \$629 per month.<sup>8</sup>

Mr. F testified he owes the IRS in excess of \$50,000 and other creditors a total of between \$20,000-\$30,000. He stated he is working with an attorney to consolidate his debts so that he can afford to pay them and his child support. He did not submit any documentation of owing any debts to the IRS or any other creditors.

### **III. Discussion**

Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>9</sup> If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes "material change in circumstances" has been established and the order may be modified. Mr. F's child support has been \$161 per month since 2006. Thus, a child support calculation of \$185.15 or more would be sufficient to warrant modification in this case.<sup>10</sup>

A modification is effective beginning the month after the parties are served with notice that a modification has been requested, so this modification is effective as of July 1, 2012.<sup>11</sup> In a child support matter, the person who files the appeal, in this case, Ms. K, has the burden of

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<sup>7</sup> Exh. 8 at pg. 4.

<sup>8</sup> Exh. 9. CSSD also included in Mr. Emmerson's income the 2012 PFD of \$878 and gave him a deduction from income of \$233.67, but did not identify the source of the deduction.

<sup>9</sup> AS 25.27.190(e).

<sup>10</sup> \$161 x 115% = \$185.15.

<sup>11</sup> 15 AAC 125.321(d). In this case, the notice was issued on June 20, 2012. Exh. 3.

proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect.<sup>12</sup>

Civil Rule 90.3(a)(1) provides that an obligor's child support amount is to be calculated from his or her "total income from all sources," minus mandatory deductions such as taxes, retirement and Social Security.

In its latest order, CSSD modified Mr. F's child support to \$399 per month, based on occupational statistics for a fisherman.<sup>13</sup> During the hearing process, Mr. F submitted his 2011 tax return that shows his total annual income for 2012 was most likely underestimated. Using the net income figure from his 2011 tax return, CSSD calculated Mr. F's modified child support at \$629 per month.<sup>14</sup> This figure appears to be correct and should be adopted.

Child support determinations calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct. The parent may obtain a reduction in the amount calculated based on financial hardship, but only if he or she shows that "good cause" exists for the reduction. In order to establish good cause, the parent must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied."<sup>15</sup>

Based on all the evidence, Mr. F did not prove by clear and convincing evidence that manifest injustice would result if his support obligation were not reduced. Mr. F did not document any of his claimed debts, so it is not possible to make a determination from his testimony alone that his child support should be reduced. He has net income of nearly \$40,000 after paying expenses, and his actual living expenses are greatly reduced because he lives on the boat for most of the year. Therefore, Mr. F's request for consideration of a financial hardship variance should be denied.

One final matter should be addressed. During the hearing process, Ms. K asserted that the State of Michigan had issued a child support order for approximately \$1,000 per month and on that basis, asserted Alaska's order should be closer to that amount. CSSD was asked to research whether another state had issued a child support order and, if so, whether that order should take priority over Alaska's order under UIFSA, the Uniform Interstate Family Support Act, codified in Alaska at AS 25.25. CSSD reported back that its intergovernmental office had

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<sup>12</sup> 15 AAC 05.030(h); 2 AAC 64.290(e).

<sup>13</sup> Exh. 4 at pg. 8.

<sup>14</sup> See Exh. 9.

<sup>15</sup> Civil Rule 90.3(c).

contacted Michigan's child support office, which responded that Michigan has dismissed its case and considers Alaska to have jurisdiction in this matter.<sup>16</sup> A more detailed discussion of UIFSA in this appeal is therefore not necessary.

#### **IV. Conclusion**

Ms. K met her burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect. Mr. F's income for 2012 has been estimated from his 2011 federal income tax return and his modified child support amount has been calculated at \$629 per month, effective as of July 1, 2012 and ongoing. No variance under Civil Rule 90.3(c) has been granted. The modified child support amount is correct and should be adopted.

#### **V. Child Support Order**

- Mr. F's child support for T is modified to \$629 per month, effective July 1, 2012, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated August 27, 2012, remain in full force and effect.

DATED this 8<sup>th</sup> day of January, 2013.

*Signed* \_\_\_\_\_  
Kay L. Howard  
Administrative Law Judge

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<sup>16</sup> See Submission to Record at pg. 1.

**Adoption**

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Under AS 25.27.062 and AS 25.27.250, the obligor's income and property are subject to withholding. Without further notice, a withholding order may be served on any person, political subdivision, department of the State, or other entity.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 28<sup>th</sup> day of January, 2013.

By: Signed  
Signature  
Kay L. Howard  
Name  
Administrative Law Judge  
Title

[This document has been modified to conform to the technical standards for publication.]